

## Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

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Refer Reply To:

CC:CORP

PLR-126739-10

Date:

September 16, 2010

### Legend

Taxpayer =

Subsidiary 1 =

Subsidiary 2 =

Date1 =

Date 2 =

Company Official =

Tax Professional =

Dear :

This letter responds to a letter dated May 28, 2010, requesting on behalf of Taxpayer an extension of time under §§ 301.9100-1 through 301.9100-3 of the Procedure and Administration Regulations to file an election. The extension is being requested for Taxpayer to file an election under § 1.1502-21(b)(3) of the Income Tax Regulations to relinquish the entire carryback period for the consolidated net operating loss (CNOL) of the consolidated group for the tax year ending Date 1. The material information submitted in the May 28, 2010, letter and supplemental information provided in correspondence dated August 30, 2010, is summarized below.

Taxpayer is the common parent of a consolidated group consisting of Taxpayer, Subsidiary 1, and Subsidiary 2 (Taxpayer Group). Taxpayer Group sustained a CNOL in the tax year ending Date 1.

Taxpayer has represented that Taxpayer Group has not, and will not carry any portion of the CNOL to a prior consolidated return year of the group. Taxpayer has also represented that no corporation that was a member of Taxpayer Group at any time during the tax year ending Date 1 had a separate return year (within the meaning of § 1.1502-1(e)) at any time during the carryback period.

Taxpayer Group did not submit a timely election to relinquish the entire carryback period for the CNOL of the consolidated group for the tax year ending Date 1. The election was due no later than the last day prescribed by law (including extensions of time) for the filing of Taxpayer's return, in this case Date 2. However, for various reasons, a valid election was not made. Subsequent to Date 2, the date the return was timely filed, it was discovered that a valid election had not been filed.

Subsequently, this request was submitted, under § 301.9100-3, for an extension of time to file the election. The period of limitations on assessment under § 6501(a) has not expired for Taxpayer or any member of Taxpayer Group for the tax year ending Date 1, or for any subsequent tax years..

Section 1.1502-21(b)(3)(i) provides that a group may make an irrevocable election under § 172(b)(3) to relinquish the entire carryback period with respect to a CNOL for any consolidated return year. The election is made in a separate statement entitled "THIS IS AN ELECTION UNDER § 1.1502-21(b)(3)(i) TO WAIVE THE ENTIRE CARRYBACK PERIOD PURSUANT TO SECTION 172(b)(3) FOR THE [insert consolidated return year] CNOLs OF THE CONSOLIDATED GROUP OF WHICH [insert name and employer identification number of common parent] IS THE COMMON PARENT." Section 1.1502-21(b)(3)(i) provides that the statement must be filed with the group's income tax return for the consolidated return year in which the CNOL arises.

Under § 301.9100-1(c), the Commissioner has discretion to grant a reasonable extension of time to make a regulatory election, or a statutory election (but no more than

six months except in the case of a taxpayer who is abroad), under all subtitles of the Code except subtitles E, G, H, and I.

Section 301.9100-1(b) defines the term "regulatory election" as including an election whose due date is prescribed by a regulation, revenue ruling, revenue procedure, notice, or announcement. Sections 301.9100-1 through 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make a regulatory election. Section 301.9100-1(a). Section 301.9100-2 provides automatic extensions of time for making certain elections. Section 301.9100-3 provides extensions of time for making regulatory elections that do not meet the requirements of § 301.9100-2. Requests for relief under § 301.9100-3 will be granted when the taxpayer provides evidence to establish that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the Government. (Section 301.9100-3(a).

In this case, the time for filing the election is fixed by the regulations (i.e., § 1.1502-21(b)(3)(i)). Therefore, the Commissioner has discretionary authority under § 301.9100-3 to grant an extension of time for Taxpayer to file the election, provided Taxpayer establishes it acted reasonably and in good faith, the requirements of §§ 301.9100-1 and 301.9100-3 are satisfied, and granting relief will not prejudice the interests of the Government.

Information, affidavits, and representations submitted by Taxpayer, Company Official, and Tax Professional explain the circumstances that resulted in the failure to timely file a valid election. The information establishes that Taxpayer reasonably relied on a qualified tax professional who failed to make or advise taxpayer to make, the election and that the interests of the Government will not be prejudiced if relief is granted, and that the request for relief was filed before the failure to make the election was discovered by the Internal Revenue Service. Section 301.9100-3(b)(1)(i) and (v).

Based on the facts and information submitted, including the affidavits submitted and the representations that have been made, we conclude that Taxpayer has established that it acted reasonably and in good faith in failing to timely file the election, the requirements of §§ 301.9100-1 and 301.9100-3 are satisfied, and granting relief will not prejudice the interests of the Government. Accordingly, we grant an extension of time under § 301.9100-3, until forty-five (45) days from the date on this letter, for Taxpayer Group to file the election for the tax year ending Date 1, as described above.

The above extension of time is conditioned on Taxpayer Group's tax liability, if any, not being lower in the aggregate for all years to which the election applies than it would have been if the election had been made timely (taking into account the time value of money). No opinion is expressed as to Taxpayer Group's tax liability for the years involved. A determination thereof will be made upon audit of the Federal income tax

returns involved. Further, no opinion is expressed as to the Federal income tax effect, if any, if it is determined that Taxpayer's Group's liability is lower. Section 301.9100-3(c).

Taxpayer should file the election in accordance with § 1.1502-21(b)(3)(i). Taxpayer's return must be amended to attach the election statement required by § 1.1502-21(b)(3)(i). A copy of this letter should be attached to the election statement.

Alternatively, if Taxpayer files its amended return electronically, Taxpayer may satisfy this latter requirement by attaching a statement to its return that provides the date and the control number of the letter ruling.

No opinion is expressed as to the tax effects or consequences of filing the election late under the provisions of any other section of the Code or regulations, or as to the tax treatment of any conditions existing at the time of, or resulting from, filing the election late that are not specifically set forth in the above ruling. For purposes of granting relief under § 301.9100-3, we relied on certain statements and representations made by Taxpayer, Company Official, and Tax Professional. However, all essential facts must be verified. In addition, notwithstanding that an extension is granted under § 301.9100-3 to file the election, penalties and interest that would otherwise be applicable, if any, continue to apply.

This ruling letter is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that that it may not be used or cited as precedent.

Pursuant to a power of attorney on file in this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

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Ken Cohen  
Senior Technician Reviewer, Branch 3  
Office of Associate Chief Counsel  
(Corporate)